

## Rule 1. General Statement

~~These rules and regulations have been~~

~~The Clients' Security Board adopted these rules pursuant to Rule 4:06, Section 1, (A), of the Rules of the Supreme Judicial Court. (S.J.C.). They provide for the administration of the Clients' Security Fund of the Bar of the Commonwealth of Massachusetts, the procedures for the presentation, consideration, and payment of claims, and the exercise of the Board's powers and duties under the Rules of the Supreme Judicial Court. (Whenever herein "he," "him," or "his" is referred to, it shall be intended to refer also to "she," "her," or "hers.") (S.J.C.).~~

## Rule 2. Definitions

For the purpose of these rules ~~and regulations~~, the following definitions shall apply:

~~(a) An "attorney" or "lawyer" shall mean (1) one who was, at the time the claim arose, a member of the bar of the Commonwealth with an office within the Commonwealth and engaged in active practice and who shall have died, shall have been disbarred or suspended from the practice of law, or shall have resigned from the bar of the Commonwealth (S.J.C. Rule 4:05, Section 2); or (2) one who while under suspension or disbarment continued to hold himself out to be a member of the bar in good standing and while so holding himself out caused a reimbursable loss.~~

~~(b)~~

~~(A) The "Board" shall mean the Clients' Security Board established pursuant to S.J.C. Rule 4:04, Section 1.~~

~~(c) "Client" shall mean a person engaging the professional legal services of a lawyer as an attorney or fiduciary as provided in S.J.C. Rule 4:04, Section 1.~~

~~(d) "Dishonest Conduct" shall mean a wrongful act committed by a lawyer against a person by defalcation or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value.~~

~~(e)~~

~~(B) The "Fund" shall mean the Clients' Security Fund held by the Board pursuant to S.J.C. Rule 4:04, Section 1.~~

~~(f) A "Reimbursable Loss~~

~~(C) An "attorney," "lawyer," or "respondent" shall mean only a loss of money or other property of clients that meets all of the following tests:~~

~~(1) The defalcation that caused the loss occurred on person who is or after September 1, 1974;~~

~~(2) The loss was caused by a member of the bar of the Commonwealth. For the dishonest conduct purpose of these rules, the lawyer, acting either as a lawyer or as a fiduciary arising out of a lawyer-client relationship; and attorney must have~~

~~(3) The lawyer has died, or has been disbarred or suspended, or has voluntarily from the practice of law, resigned from the bar of the Commonwealth; (S.J.C. Rules 4:01, Section 15; 4:05, Section 1), or continued to act as a member of the bar in good standing while under suspension, disbarment, or resignation.~~

~~except that there~~ (D) “Client” shall be excluded from mean a person who suffered a reimbursable loss resulting from an attorney acting either as an attorney or fiduciary as provided in S.J.C. Rule 4:04, Section 1.

(E) “Dishonest Conduct” shall mean wrongful acts committed by an attorney such as theft, embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value, regardless of where the conduct occurred, including but not limited to:

(1) Failing to refund unearned fees received in advance as required by Rule 1.16(d) of the Massachusetts Rules of Professional Conduct;

(2) Borrowing of money from a client without intention to repay it, or with disregard of the attorney’s ability or reasonably anticipated ability to repay it; and

(3) any Settling a case without authorization and misappropriating the settlement proceeds.

When

an attorney settled a contingent fee case, the Board may review the facts and, in its discretion, conclude that the attorney settled the case for less than full value and reimburse the claimant for any legal fees that the attorney received.

(F) A “Reimbursable Loss” shall mean the loss of a client’s money or other property caused by the dishonest conduct of an attorney that arose out of an attorney-client or a fiduciary relationship.

(G) A reimbursable loss shall not include:

(1) Any loss to the extent ~~it~~the client has been recovered or may be recoverable recover from a collateral source, and except that in such as, but not limited to, a bond, a surety agreement, or insurance contract;

(2) Any loss arising solely out of an investment, lending, personal, or business relationship; or

(3) Any consequential or incidental damages, such as lost interest, or lawyer’s fees, or other costs incurred in seeking recovery of a loss.

In cases of hardship, the Board may, in its discretion, recognize as a reimbursable loss a claim that would otherwise be excluded hereunder.

### Rule 3. Organization

#### A. Meetings.

(1) The Board shall ~~hold an organizational meeting each year in January, meet at such time and place as the chairman shall specify, at which the~~ least quarterly. The Board shall elect a treasurer and a secretary

~~to~~ who shall serve until the ~~next organizational meeting~~ Board elects a different member to assume the responsibilities of either office.

~~(2) Other~~ (2) The Board may hold other meetings ~~of the Board shall be held from time to time~~ upon the call of the ~~chairman~~ Chair or a majority of the members, ~~upon~~ with reasonable notice to the members.

(3) A majority of ~~duly appointed~~ Board members ~~of the Board~~ shall constitute a quorum. A majority of the members present at a duly constituted meeting may exercise any powers held by the Board.

## B. Duties of Officers.

(1) The ~~chairman~~ Chair shall preside at all meetings of the Board and shall coordinate and supervise the ~~administration of the administrative~~ activities of the Board and of the Fund. The ~~vice-chairman~~ Chair may ~~delegate the administrative activities to the Executive Director of the Board of Bar Overseers pursuant to S.J.C. Rule 4:06, Section 1(G). The Vice-Chair~~ shall preside at meetings in the absence of the ~~chairman~~ Chair and shall have such additional duties as the ~~chairman~~ Chair or the Board shall designate.

(2) The treasurer shall have custody of the money and other assets of the Fund, receive all payments to the Fund, make disbursements from the Fund authorized by the Board, invest the monies of the Fund in the manner authorized by the Board, cause an annual audit to be made of the Fund ~~and~~, maintain appropriate financial records, and file such tax or information returns as may be required. ~~Each year immediately after the organizational meeting, the treasurer~~ The Board shall obtain and file with the secretary a surety company bond in the amount of at least \$~~200~~500,000, and covering all members of the Board; ~~provided, however, that the~~ The Board may delegate some or all of its duties under this paragraph (2) to the ~~Administrator of the Board of Bar Overseers~~ general counsel and staff.

(3) ~~The~~ In conjunction with the general counsel the secretary shall prepare and maintain minutes of each meeting of the Board. ~~He~~ The secretary shall have such other duties as the ~~chairman~~ Chair or the Board shall designate.

## C. Staff of the Board.

(1) The Board may employ and cause to be compensated ~~consultants, agents, legal~~ an executive director, general counsel, additional counsel, an administrative assistant, and any other employees ~~and may make contracts~~ as are necessary for the performance of ~~administrative and similar services~~.

~~(2)~~ the Board's work. At the Board's discretion, one person may serve as both the Board's executive director and general counsel. The Board's executive director, or the general counsel if the Board may appoint an administrator who does not have an executive director, shall perform those duties either assigned to him by the Board or imposed upon him by these rules. The administrator shall supervise all ~~the~~ be responsible for overseeing and managing the Board's staff ~~of the Board except legal counsel and legal counsel's staff~~.

#### Rule 4. Investment of the Fund

Money paid into the Fund may, upon authorization by the Board, be invested in any of the following:

- ~~(A)~~ Bonds, notes, or other securities of or guaranteed by the United States or any Federal agency;
- ~~(B)~~ Bonds, notes, or other securities of or guaranteed by the Commonwealth of Massachusetts;
- ~~(C)~~ Interest-bearing accounts or certificates of any federally insured bank, trust company, savings bank, or savings and loan association; ~~and/or~~
- ~~(D)~~ Any fund insured by the Federal Deposit Insurance Corporation;

~~provided, however, that~~ In addition, not less than twenty-five percent (25%) of the Fund shall be held in a money market fund or in investments maturing ~~or disposable at par~~ within three months.

#### Rule 5. ~~Claims for Reimbursement~~

##### ~~A. The Filing of Claims.~~ A Claim

##### A. Claim Form.

- (1) ~~No formalities with respect to claims are required, but a~~ A claimant shall ~~make application~~ apply to the Board in writing, on a form supplied by the Board, containing the following information:
  - (a) The claimant's name, home and business ~~address~~ addresses, and occupation ~~of the claimant~~;
  - (b) The name and address (including the address at the time the claim arose) of the ~~lawyer~~ attorney involved;
  - (c) A summary ~~statement~~ of the attorney's actions ~~of the lawyer giving rise to the claim, with any supporting documents~~;
  - (d) The date and circumstances under which the claimant discovered ~~his~~ the loss;
  - (e) The efforts made to ~~secure redress~~ obtain reimbursement from the ~~lawyer~~ attorney or any third party;
  - (f) The total amount of the claimant's loss ~~incurred by the claimant~~, including how the ~~method~~ claimant calculated the amount of ~~its computation~~ the loss;
  - (g) The name and address of any ~~lawyer~~ attorney or other person assisting or representing the claimant in connection with the claim;
  - (h) The claimant's signature or other verification ~~by; and~~

(i) How claimant learned of the Fund.

(2) The claimant shall include with the claim form all supporting documentation of the events giving rise to the claim.

(2)

(3) A claimant shall provide a financial statement shall be filed by each claimant in a form approved and when requested by the Board- tax returns

(3) The application form shall contain the following statement in bold face type:

“IN ESTABLISHING THE CLIENTS’ SECURITY FUND, THE SUPREME JUDICIAL COURT OF MASSACHUSETTS DID NOT CREATE OR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES BY THE CLIENTS’ SECURITY BOARD SHALL BE A MATTER OF GRACE IN THE SOLE DISCRETION OF THE CLIENTS’ SECURITY BOARD AND NOT A MATTER OF RIGHT. THE CLAIMANT REPRESENTS THAT NO FEE HAS BEEN OR WILL BE PAID TO ANY LAWYER FOR SERVICES RENDERED IN THE PREPARATION OR FILING OF THIS APPLICATION FOR REIMBURSEMENT, NOR FOR OR ON ACCOUNT OF THE PAYMENTS OF ANY SUMS AS A RESULT OF THIS APPLICATION. NO CLIENT OR MEMBER OF THE PUBLIC SHALL HAVE ANY RIGHT IN THE CLIENTS’ SECURITY FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE.”

(4) The form shall be sent to the Clients’ Security Board at its office at 99 High Street, Floor 2, Boston, Massachusetts 02110-2320, or to such other office as the chairman shall designate.

**B.**

(5) The Board may, in its discretion, require the exhaustion of ~~some or all~~ civilreasonable remedies before processing ~~or paying a claim, or reimbursing a loss.~~ Such remedies

(6) The Board may require that a claimant prosecute or include, but are not limited to, pursuing recovery under a bond, from a surety, from a professional liability insurance carrier, by filing a civil action, or by reporting the loss to appropriate criminal authorities. A claimant’s failure to cooperate in appropriate civil proceedings as a prerequisite to the grant of relief to such claimant from the Fund. The claimant’s cooperation in the disciplinary proceedings against the lawyer shall not be a prerequisite to the ~~grant~~ granting of relief from the Fund.

C. The claim form and supporting documentation shall be sent by mailed or hand-delivery to Clients’ Security Board, 99 High Street, 2<sup>nd</sup> Floor, Boston, MA 02110-2320. The claim form and supporting documentation may also be e-mailed to: [info@masscsb.org](mailto:info@masscsb.org).

#### Rule 6. Processing Applications A Claim

**A.** The ~~chairman or his designee~~ general counsel shall cause reasonable investigation to be made of ~~any claim coming to the attention of~~ all claims filed with the Board.

**B.** Any member of the Board who has or has had a lawyer-client or financial relationship with a claimant or respondent, or is related by blood or marriage to either the claimant or respondent, shall not participate in the investigation or adjudication of any claim involving that claimant or that respondent.

C. As soon as practicable after receiving a claim, the Board shall send a copy of the claim shall be served upon or sent by mail any reasonable method to the last known address of the lawyer attorney who is complained the subject of having engaged in dishonest conduct as soon as practicable after it has been filed with the Board, and the lawyer will the claim. The attorney shall have twenty days within which from the date of mailing to file an answer with the Board.

D. If the secretary or designee of the chairman finds that claim does not meet the requirements of S.J.C. Rule 4:05, Section 2, have been met, he shall then ask the claimant to supply such additional information and documentation as he deems appropriate for the presentation of the claim to the Board and, upon receipt of such information, shall notify the chairman that the claim is ready for adjudication. If the 1 but bar disciplinary proceedings are pending, general counsel shall notify the claimant of the requirements of Rule 4:05, Section 2, have not been met, but proceedings are pending, he shall notify the claimant of the requirements of the Rule and 1. General counsel shall maintain the claim in an inactive status and periodically determine from the Board of Bar Overseers the status of such the disciplinary proceedings. Any The Board shall use any information obtained from the Board of Bar Overseers file by the secretary or the designee of the chairman shall be used solely by or for the Clients' Security to investigate and resolve claims. The Board and shall constitute maintain any such information as confidential information. The secretary or the designee.

E. In determining whether it would be more appropriate for the Fund or the fund of another jurisdiction to pay a claim, the Board should consider the following factors:

(1) the fund(s) into which the attorney was required to pay an annual assessment or into which an appropriation was made on behalf of the attorney by the bar association or otherwise;

(2) the domicile of the attorney;

(3) the domicile of the client;

(4) the residence(s) of the attorney;

(5) chairman shall thereafter, if the requirements the number of years the attorney has been licensed in each jurisdiction;

(6) Section 2(2) the location of Rule 4:05 have been met, reinstate the claim and notify the Board and the claimant, the attorney's principal office and other offices;

(7) where the attorney-client relationship arose;

(8) where the attorney performed the legal services;

(9) whether at the time the attorney performed the legal services, the attorney was engaged in the unauthorized practice of law as defined by the jurisdiction in which the attorney performed the legal services;

(10) any negligence or conduct of the claimant that may have contributed to the loss; and

(11) any other significant contacts with Massachusetts or another jurisdiction.

#### Rule 7. Consideration and Payment of Claims

**A.** Upon ~~being notified~~determination by general counsel that ~~the~~ claim is ready for adjudication, the Board shall ~~determine~~decide the matter upon the record before it or after such hearing as the Board in its discretion deems necessary. In the event the Board determines that a hearing is not necessary, it shall cause the parties to be notified that the Board will consider the claim without hearing.

**B.** ~~If~~As an alternative to the chairman determines that a Board hearing is required, he shall a matter, the Chair may designate one or more members of the Board as hearing members, who shall ~~be furnished with~~consider the Board's file ~~thereon by the secretary or his designee, decide~~ to hear the claim, ~~to~~ make further investigation as they may deem appropriate, ~~and to~~ make recommendations to the Board for disposition of the claim, ~~including recommendations as to agreements, if any, into which the claimant should enter.~~

**C.** ~~Hearings shall be held~~The Board may hold hearings at the Board's offices or other places mutually convenient to the ~~hearing member or Board~~ members and the claimant. ~~A~~The Board may make a recording ~~shall be made or a transcript taken~~ of each hearing, ~~when feasible,~~ solely for its administrative purposes.

**D.** ~~Notice~~The Board shall send notice of hearing ~~shall be sent by mail~~any reasonable method to ~~both~~ the claimant ~~and his,~~ claimant's counsel ~~and to,~~ the respondent ~~and his~~at the respondent's last known address, and the respondent's counsel.

**E.** The Board, in acting on each claim, shall take into account the standards and factors set forth in S.J.C. Rule 4:05, Section 3.

**F.** ~~Payment~~As soon as practicable, the Board shall send notice of its determination by any reasonable method to the claimant, claimant's counsel, respondent, and respondent's counsel.

**G.** The Board shall make payment of an approved/allowed claim ~~shall be made~~ as soon as practicable following its adjudication.

~~G.~~ A claimant and respondent may be advised of the status of the Board's make payment by any reasonable method giving consideration to a claimant's circumstances and the Board's need for documentation of the claimant's receipt of his application, and the payment. Before the Board makes payment, it shall obtain a subrogation agreement from the claimant ~~shall be advised of the final determination.~~

**H.** Upon the request of a claimant, respondent, or member of the Board, ~~Notice,~~ the Board in its discretion may reconsider its adjudication of a claim. Unless the time is extended by the Board, a claimant or respondent shall file a request with the Board within thirty days after the date of the Board's final determination shall be mailed to the respondent at his last known address adjudication. The request

shall state in writing and with particularity the facts on which reconsideration is sought. Except as provided herein, an adjudication of the Board is final and the Board shall give no further consideration to the original claim form or subsequent claim forms based upon substantially the same allegations.

~~H. All applications~~I. Any payment of claims shall be a matter of grace, not right, and no client, beneficiary, employer, organization, or other person shall have any right or interest in the Fund. No decision to allow or deny reimbursement shall be subject to judicial review in a court of either appellate or original jurisdiction.

#### Rule 8. Confidentiality

The Board shall keep confidential all claim forms, proceedings, investigations, ~~claims~~claimants' and respondents' financial information, and reports involving specific applications for reimbursement from the Fund and all financial statements furnished by the claimant shall be kept confidential. ~~claims received and payments made from the Fund.~~ The Board and its staff shall ~~conduct themselves so as to~~ maintain the confidentiality of the ~~application, investigation~~claimants, investigations, and ~~proceeding~~proceedings. This provision shall not be construed ~~(to~~:

(A) to deny relevant information to the Board of Bar Overseers, to a court or investigative agency of proper jurisdiction, to an authorized agency investigating the qualifications of a judicial candidate, or ~~to another jurisdiction investigating qualifications for governmental employment; (2) to prohibit the release of statistical information that does not disclose the identity of the parties; or (3) to prohibit the release of publicity as provided in section 11 herein.~~claim form for governmental employment;

~~I. Upon the request of a claimant, respondent or member of the Board, the Board, in its discretion, may reconsider its adjudication of a claim. Unless the time is extended by the Board, a request by a claimant or respondent shall be filed with the Board within thirty days following the date of the Board's adjudication, and shall state in writing and with particularity the facts on which reconsideration is sought. Except as provided herein, an adjudication of the Board is final and the Board shall give no further consideration to the application or another application based upon substantially the same allegations.~~

(B) to prohibit the release of statistical or summary information that does not disclose the identity of the parties; or

(C) to prohibit the release of publicity after the Board has made an award in a manner that is consistent with the provisions of this section.

#### Rule 89. Subrogation for Reimbursement Made

As a condition of reimbursement, a claimant must execute a subrogation agreement on a form prepared by the Board. A-The Board shall be subrogated to the rights of a claimant to the extent of the amount of reimbursement made by the Board, and, where practicable, will seek recovery for the Fund. ~~An~~The Board may bring an action ~~may be brought~~ either in the name of the claimant or in the name of the Board, and, as a condition of reimbursement, the claimant shall agree to cooperate with the Board in the prosecution of such action.

~~B. As a condition of reimbursement, a claimant must execute a subrogation agreement on a form prepared by the Board. Upon commencement of an action by the Board pursuant to its subrogation rights, it shall advise the reimbursed claimant of such action at his last known address. A reimbursed claimant may then join in such action to press an application for his loss in excess of the amount of the reimbursement.~~  
~~Rule 9.~~

#### Rule 10. Attorney's Fees

~~No part of any award of the Board shall be paid to any~~  
~~Any attorney acting on behalf of the claimant, and any attorney so acting representing a claimant before the Board shall do so as a public service and shall not receive any portion of the award or any fee from the claimant for services related to the Board's proceedings.~~

#### Rule 11. -

#### ~~Rule 10.~~ Insurance of Approved Claims

The Board may insure the payment of claims approved by the Board with such insurance carrier or carriers as it may from time to time elect and may, in such event, authorize the treasurer to pay out of the Fund such premiums as it shall approve.

#### ~~Rule 11.~~

#### Rule 12. Publicity

~~A. All publicity regarding the~~ The Board shall have the discretion to publicize its activities, decisions, and awards of so long as any publicity adheres to the Board shall be within the discretion ~~of confidentiality requirements set forth in Rule 8.~~

~~B. After awards are made,~~ the Board-

~~B. The Board, in appropriate cases,~~ may publicize ~~decisions and awards made by it, and any information concerning its decisions and its~~ awards may contain by disclosing the name of, and other information pertaining to, a lawyer an attorney who has caused a reimbursable loss. The Board may withhold such information in those cases in which where it finds the existence of mitigating circumstances.

#### Rule 13.

#### ~~Rule 12.~~ General Provisions

A. The Board may waive technical adherence to these rules ~~and regulations in order~~ to achieve the objectives of Supreme Judicial Court Rules 4:04 S.J.C. Rules 4:04 to 4:08, inclusive.

B. ~~These~~ The Board may amend these rules ~~and regulations may be amended~~ at any time by a majority vote ~~of the Board~~, subject to the approval of the Supreme Judicial Court.